

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**BOBBY JONES,
Plaintiff – Pro Se**

-VS-

**MARKUS A. GREEN, DR. ROBY
MITCHELL, THE TRAVIS COUNTY
DISTRICT ATTORNEY, and
EXECUTIVE DIRECTOR OF THE
TEXAS BOARD OF MEDICAL
EXAMINERS**

Case No. 1:11-cv-00850-LY-AWA

**DEFENDANT TRAVIS COUNTY DISTRICT ATTORNEY'S
RESPONSE IN OPPOSITION TO DEFENDANT GREEN'S
MOTION TO DISMISS LEHMBERG'S REPLY**

TO THE HONORABLE COURT:

COMES NOW Defendant Travis County District Attorney Lehmberg, by and through her attorney of record, and hereby files this Response in Opposition to Defendant Green's Motion to Dismiss Lehmberg's Reply, and respectfully shows the following:

1. On November 14, 2011, Defendant Lehmberg filed a Reply [Dkt. 20, at 1] to Defendant Green’s Response to her Motion to Remand [Dkt. 18, at 1].
 2. Defendant Lehmberg’s Reply was filed pursuant to Rule CV-7(e) of the Local Court Rules which state “[a] party may file a reply in support of a motion.” Local Court Rules CV-7(e). A reply must be filed within eleven days of service of the response. *Id.* Defendant Lehmberg timely filed her Reply pursuant to Rule CV-7(e).
 3. Contrary to Defendant Green’s assertions, Rule 15(a) of the Federal Rules of Civil Procedure is not applicable to this case because Defendant Lehmberg has not filed or even attempted to file an Amended Motion to Remand.

4. Defendant Lehmberg's Reply is not time-barred by 28 U.S.C. § 1447(c) because the thirty day time limit set forth in § 1447(c) applies only to a motion to remand based on "any defect other than lack of subject matter jurisdiction." 28 U.S.C. § 1447(c). Defendant Lehmberg's Motion to Remand regarding subject matter jurisdiction was filed within thirty days of Defendant Green's notice of removal.

5. Defendant Lehmberg adopts the arguments she made in her Motion to Remand [Dkt. 13] and her Reply [Dkt. 20] as if fully set out herein.

CONCLUSION AND PRAYER

For the foregoing reasons Travis County District Attorney Lehmberg respectfully asks for this Court to deny Defendant Green's Motion to Dismiss Lehmberg's Reply, and for any and all further relief to which Defendant may be entitled, both at law and in equity.

Respectfully submitted,

DAVID A. ESCAMILLA
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By: /s/ SHERINE E. THOMAS
Sherine E. Thomas
State Bar No. 00794734
Attorney for Defendant
Travis County District Attorney
Rosemary Lehmberg

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically filed with the Court which will send notification to the parties listed below electronically, via the CM/ECF system on this 2nd day of December, 2011 as follows:

Sherine E. Thomas
P.O. Box 1748
Austin, Texas 78767
*Attorney for Defendant Travis County
District Attorney Rosemary Lehmberg*

Ted. A Ross
Assistant Attorney General
Office of the Attorney General of Texas
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*Attorney for Defendant Mari Robinson,
Executive Director of the Texas Medical Board*

I further hereby certify that the foregoing Response has been sent via certified mail, return receipt requested to the following *pro se* parties:

Bobby Jones, #679520
Neal 9055 Spur Road 591
Amarillo, Texas 79107
Plaintiff Pro Se

Via CMRRR # 7008 1140 0002 7307 1702

Markus A. Green, #118715
Neal Unit 9055 Spur Road 591
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Defendant Pro Se

Via CMRRR # 7008 1140 0002 7307 1719

By: _____ /s/ **SHERINE E. THOMAS**
Sherine E. Thomas
Assistant County Attorney